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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC RULE ROOM

In the Matter of

Amendment of Section 73.202(b)
FM Table of Allotments
(Jefferson City, Cumberland Gap
Elizabethton, Tennessee)

MM Docket No. 94-116
RM-8507

To: Chief, Policy and Rules Division

COMMENTS

JBD, Inc., licensee of WXJB(FM), Harrogate, Tennessee, and Country-Wide Broadcasters, Inc., licensee of WFXV(AM), Middlesboro, Kentucky by their undersigned counsel herewith submit their joint Comments in opposition to the Commission's Notice of Proposed Rulemaking (DA 94-1060), released October 5, 1994, wherein the Commission proposed the substitution of Channel 256A for 257A at Jefferson City, Tennessee and the reallocation of substituted Channel 256A from Jefferson City to Cumberland Gap, Tennessee, thereby amending Section 73.202 of the Commission's Rules, FM Table of Assignment, as follows:

City	Channel No.	
	Present	Proposed
Jefferson City, TN	257A	---
Cumberland Gap, TN	---	256A

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1. In its Notice of Proposed Rulemaking the Commission noted (at para. 3) that Cumberland Gap, Tennessee, had a 1990 Census population of only 210, while Claiborne County, Tennessee, in which it is located, had a 1990 population of 21,137. By contrast, Jefferson City, Tennessee, had a 1990 census population of 5,494 and Jefferson County, in which it is located, had a 1990 Census population of 33,016. Based on information obtained from the local Chamber of Commerce, Jefferson City's population had increased to 6,000 by 1993.

2. As the Commission acknowledges in its Notice of Proposed Rulemaking (at para. 2) Jefferson City is currently served by WJFC(AM) in addition to WUSK(FM). What the Notice of Proposed Rulemaking fails to address is the fact that WJFC(AM) is authorized to operate with only 500 watts and only during daytime hours. Accordingly, the proposal advanced in the Notice of Proposed Rulemaking to reallocate the only FM Channel assigned to Jefferson City to Cumberland Gap, Tennessee, would deprive Jefferson City of its only nighttime service and leave it with only a 500 watt AM facility, during daytime hours. The Notice of Proposed Rulemaking failed to address this very significant fact, which must be accorded appropriate consideration. Thus, while the Commission is correct that the proposed reallocation of the Channel to Cumberland Gap would not deprive Jefferson City of "its only local radio station," the proposal advanced in the Notice of Proposed Rulemaking would deprive Jefferson City of local service during nighttime hours, a fact which, given the significant

disparity in population between Jefferson City and Cumberland Gap, should provide sufficient basis, alone, for denial of the proposed reallocation.

3. The Notice of Proposed Rulemaking also fails to acknowledge the fact that WUSK(FM) and WJFC(AM) are the only stations which serve Jefferson County, Tennessee, while Claiborne County, is served by 4 commercial and one noncommercial local radio stations, as well as two commercial low power television stations: WNTT(AM) and WCTU(FM), Tazewell, Tennessee; WRWB(AM), WXJB(FM), WLMU(FM), Harrogate, Tennessee; W18AN(TV) and W14AQ(TV), Harrogate, Tennessee. Yet, as reflected at paragraph 1, above, Claiborne County, Tennessee, had a 1990 Census population of only 21,137, a total of 11,879 fewer persons than Jefferson County, Tennessee, which is currently served by only two local stations, including WUSK(FM).

4. Furthermore, as the Commission acknowledges in its Notice of Proposed Rulemaking (at para. 2), were the Channel reallocated to Cumberland Gap, as proposed, it would serve "a substantial portion of" Bell County, Kentucky. In that regard, existing local service in Bell County, Kentucky, must also be considered, which includes 5 commercial radio stations: WFXY(AM), WMIK(AM) and WMIK(FM), Middlesboro, Kentucky; WANO(AM) and WRIL(FM), Pineville, Kentucky. The Commission should take official notice of the fact that Pineville, Kentucky is located only approximately 12 miles from Cumberland Gap, Tennessee, and that Middlesboro, Kentucky, is located less than one mile from Cumberland Gap.

5. The utter folly of reallocating a Channel utilized by an existing station from a community of 6,000 persons to a community of 200 should be self-evident. The Petitioner's contention that reallocation of the Channel would accord the station "an opportunity for financial stability" is entirely unsupported and utterly without merit. As indicated above, WUSK(FM) is one of two stations currently licensed to a community of 6,000 persons in a county of 33,000. ¹ / The contention that re-licensing WSUK(FM) to a community of only 210 persons, located in a county with a smaller population and already served by 5 other radio (and two television) stations, will serve to improve the "financial stability" of the station is ludicrous on its face.

6. It is readily apparent that the sole purpose of the proposed substitution/reallocation of Channel 256A to Cumberland Gap, Tennessee, is to permit the upgrade of WUSJ(FM) to 257C2 at Elizabethton, Tennessee. While that proposed upgrade would result in a significant increase in area served by WUSJ(FM), the area in question is already well served, so little public interest benefit would result, especially when compared to the loss of Jefferson City's only local nighttime service. Under such circumstances the proposed reallocation would not advance the stated objectives underlying the Commission's allocation criteria. WUSK(FM) has been licensed to Jefferson City, Tennessee since 1976. The people of

1. WUSK(FM) is co-owned with WJFC(AM), the only other station licensed to Jefferson County, Tennessee.

that community and of Jefferson County have become accustomed to receiving the local nighttime service which it provides. The public interest would not be served by the deletion of Jefferson County's only existing local nighttime service, simply to provide first service to Cumberland Gap, a "community" of only 210 persons, located in a county which has both a smaller population and significantly greater local day and nighttime broadcast service than does Jefferson County. Accordingly, the reallocation proposal should be denied.

WHEREFORE, for the foregoing reasons, the Commission should not amend Section 73.202 of its Rules by substituting Channel 256A for 257A at Jefferson City, Tennessee, or by reallocating substituted Channel 256A from Jefferson City to Cumberland Gap, Tennessee, and should terminate this proceeding without making any changes to the FM Table of Allotments.

Respectfully Submitted,

JBD, INC.

and

COUNTRY-WIDE BROADCASTERS, INC.

By: 

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November 28, 1994

CERTIFICATE OF SERVICE

I, Timothy K. Brady, hereby certify that I have, this 28th
day of November, 1994, served a copy of the foregoing Comments by
First Class mail, postage prepaid upon the following:

Eaton P. Govan, III. and Berton B. Cagle, Jr.
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